

Chiefs and combatant commanders were deeply involved throughout the review process.

Mr. KYL. Mr. President, do I have the time?

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. KERRY. I thought I had been recognized.

Mr. KYL. Let me jump in on a couple of points. First of all, it is in my opinion it is incorrect to suggest that the phased adaptive approach is superior to the ground-based or GBI approach. I know there are people in the military who came up here and testified that it was a good idea to do that. Secretary Gates himself said that. I believe, however, if one understood the debate fully, one would appreciate that this was also a political decision made by the President and influenced by other considerations.

This administration has never liked the GBI that the Bush administration developed. It is my opinion that the GBI is more effective than the phased adaptive approach, especially since the administration is not talking about deploying but merely having available the fourth stage. But GBI is a more effective system.

We could have that debate, and I am happy to have that at another time. All I was trying to suggest is that the decision to remove GBI from the plan for Poland and substitute this other approach that is available at a later time, and, in my view, less effective, and also not have the GBI as a contingent backup until 2017, rather than 2015, were mistakes on our part at least, and at worst were decisions made to placate the Russians. That would not be a good thing.

I am simply trying to illustrate the fact that some believe that already in an effort to try to placate the Russians—maybe that is not the right word—try to act in concert with their wishes—choose to characterize it however you wish—the United States has pulled its punches on missile defense. I don't want that to happen.

With this construct, I am afraid that is the kind of influence they would bring to bear. I will ask my colleague a question. Do I understand the Senator to say that if the United States, for example, attaches understandings and conditions to this treaty, if the Senate were to ratify it, and if we make a change in the preamble, that the treaty does not go to the Russian Duma with those conditions or understandings and the change in the preamble but, rather, has to go back to some negotiating process? I thought the process was that the Russian Duma could add its own conditions or understandings and could either accept or reject the treaty as it came to them from the Senate.

Mr. KERRY. Mr. President, the process is that it goes from us under any circumstances, if we have acted on it, to the Government of Russia. The Government of Russia makes the decision

as to whether they are going to negotiate and whether it is a substantive kind of change they object to. They may refuse to put it to the Duma or they may want to renegotiate it. It opens it up to renegotiation. It is not automatic. They don't have to send it to the Duma. They can sit on it.

Mr. KYL. I appreciate that clarification. I hope my colleague is not suggesting that, under no circumstances, should the Senate ever change a treaty so that the other party to the treaty would have to, in effect—well, the Senate would never be able to change a treaty. Put it that way.

Mr. KERRY. No, I agree. I already spoke to that. I said if it is in the four corners of the treaty and has fundamental operative impact on us, I would say, OK, we have to go back and do it. That is not the case here. We are talking about an innocuous, nonbinding, and a recognition of an existing reality that the administrations on both sides have already acknowledged. And Dr. Kissinger and others have said ignore the language, it is meaningless. It is simply a statement of the truth.

Mr. KYL. That is my point exactly. If it is no more than that, I cannot imagine that it would be a treaty killer for the Russians unless there was something else afoot. And that something else—they deem it very important. Why? This is the legal grounds for them to withdraw from the treaty. That is the point.

This is precisely what Lavrov, the Foreign Minister, said. Linkage to missile defense is clearly spelled out in the accord and is legally binding and they talked about their ability to withdraw under article XIV based upon the U.S. improvement of our missile defense qualitatively or quantitatively. That is why it is so important to the Russians.

I don't know if it is a treaty killer because I think there is so much else in this treaty the Russians want, they are not likely to walk away from this if that language is eliminated. But I do think it is important to them because they are trying—this is the first time they have been able to get their foot in the door and establish that linkage, even though in the preamble—not in the body, although they did put article V in there, which also confirms the linkage. It is so important to them that it may be a problem for ratification on their side because then they would not have established this binding legal right to withdraw from the treaty.

Again, as Senator KERRY has pointed out, either side can make up a reason to withdraw from the treaty. But it is difficult for either side not to have a pretext, a legal pretext, and that is what they are creating here. The legal pretext is the United States developing a missile defense system that goes beyond what the Russians think it should vis-a-vis their strategic offensive capability. That is the whole point, and that is the reason for the amendment.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. KYL. I have taken the time here, so I will yield the floor to Senators SESSIONS and KERRY, if they want to continue.

Mr. KERRY. I will yield too and Senator SESSIONS has been very patient. I wish to say two things, if I can, in closing, very quickly.

No. 1, the point that the Senator just made about the legal pretext for withdrawing from this treaty, let's go back to the colloquy we had a few minutes ago. You don't need a legal pretext. You don't need anything except a judgment on your part there is an extraordinary circumstance that says you want to get out, and the extraordinary circumstance can be that you see your offensive weapons have been dramatically reduced in their impact by our defense. So they do not need a legal pretext. It has nothing to do with what the Senator has just suggested.

The final comment I would make is, perhaps the Senator and I—and I invite this one more time because I think we have moved enormously with the language we have in our resolution of ratification from Senator DEMINT. We worked on it together. I embraced it. I think it is an important statement. Perhaps the Senator and I can find some further way to include that in here so we are not taking the risk of what they might or might not do.

Neither of us have the ability to predict what their reaction will be. Although I think some people would be pretty clear about the fact that it would not be well received, it could be a serious issue for a lot of different reasons. So if we can avoid that, we have a responsibility to do that in the next day or two. I look forward to working with my colleague, and I thank him for the colloquy.

I yield the floor.

SIGNING AUTHORITY

Mr. KERRY. Mr. President, as if in legislative session and in morning business, I ask unanimous consent that Senator DURBIN be authorized to sign any dual-enrolled bills and joint resolutions during today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

FURTHER CONTINUING APPROPRIATIONS, 2011

Mr. KERRY. Mr. President, as if in legislative session and in morning business, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 105, received from the House and at the desk.

The PRESIDING OFFICER. The clerk will report the joint resolution by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 105) making further continuing appropriations for fiscal year 2011, and for other purposes.

There being no objection, the Senate proceeded to consider the joint resolution.